EX PARTE OR LATE FILED

Leonard J. Cali
Vice President & Director
Federal Regulatory Affairs
AT&T Federal Government Affairs

Suite 1000
1120 20th St. NW
Washington, DC 20036
202 457-2120
FAX 202 457-2545

January 20, 1999

RECEIVED

JAN 20 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TWB-204
Washington, D.C. 20554

RE: Ex Parte Meeting: In the Matter of Deployment of Wireline Services Offerings Advanced Telecommunications Capability, CC Docket No. 98-147

Dear Ms. Roman Salas:

I have enclosed for inclusion in the public record of the captioned proceeding a letter that I today sent to Chairman Kennard concerning proposals to establish "data LATAs." Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a) of the Commission's rules.

Sincerely,

Enc.

No. of Copies rec'd 0+1
List ABCDE

Recycled Paper

Leonard J. Cali
Vice President & Director
Federal Regulatory Affairs
AT&T Federal Government Affairs

Suite 1000
1120 20th St. NW
Washington, DC 20036
202 457-2120
FAX 202 457-2545

January 20, 1999

The Honorable William E. Kennard, Chairman
Federal Communications Commission
445 Twelfth Street, S. W. – Room 8B201
Washington, D. C. 20554

Re: *Ex parte,* CC Docket No. 98-147 -- Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Chairman Kennard:

Recent discussions at the Commission have raised the prospect that the Commission might, in connection with its Section 706 proceedings, seek to grant the BOCs broad interLATA relief, possibly statewide, through the establishment of new "data LATAs." According to these proposals, BOCs that have not met the requirements of § 271 would nonetheless be authorized within these larger areas to provide currently prohibited interLATA data services, so long as they do so through a separate affiliate. As explained below, such authority would violate the plain language and underlying policy of the Act, and seriously undermine prospects for fully opening local markets to competition for the benefit of all consumers. For these reasons, AT&T respectfully urges the Commission to reject these proposals.

To foster local competition, Congress established clear incentives for the BOCs to cooperate in the opening of their monopolies. Specifically, because Congress understood that incumbents would not willingly surrender their monopolies, the Act permits in-region, interLATA authority only after the BOCs have completely and irreversibly opened their markets, and all consumers can benefit from local competition. This is an incentive-based approach that takes full advantage of the interLATA restriction to provide the BOCs reason to open their local markets for the benefit of all consumers.

By contrast, the "data LATA" proposal, as we understand it, would have the effect of rewarding incumbents for their continuing intransigence in opening local

exchange markets, and would permanently reduce incentives to comply with market-opening requirements. Under this scheme, a BOC would be permitted to provide interLATA telecommunications services without any showing that it complied with the requirements of § 271 and opened its local monopoly. Instead, the Commission would establish a new regulatory framework pursuant to which BOCs that comply with certain separate affiliate regulations would be subject to a new and different set of LATAs for certain types of services. Apart from the regulatory morass that would be created, this approach would be inconsistent with the requirements of the Act, undermine incentives for the complete opening of these markets, and delay the day when all consumers would benefit from competition for voice and data services.

In its Memorandum Opinion and Order in this docket,[1] the Commission correctly rejected requests for "large-scale changes in LATA boundaries," recognizing that these requests were "functionally no different" from requests for prohibited forbearance from § 271.[2] Section 10(d) "limits the manner in which the Commission may exercise its sole and exclusive authority to approve the establishment of or modification to LATA boundaries" and does not sanction "the piecemeal dismantling of the LATAs."[3] As the Supreme Court held in *MCI v. AT&T*, the FCC's statutory authority to "modify" portions of the Communications Act does not encompass "fundamental changes" in the scheme established by Congress.[4] Thus, the Commission correctly held that establishing a single "global

---

1 *See* Memorandum Opinion and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, ¶¶ 69-79 ("*Advanced Telecommunications Services*").

2 *Id.*, ¶¶ 80-82. Significantly, in light of this restriction on its authority, the Commission sought comment on limited LATA boundary modifications only where school districts straddle LATA boundaries (¶ 192) or where such modification was necessary to provide subscribers in rural areas access to advanced services (¶ 194). The Commission has not provided adequate notice that it was contemplating such "far-reaching and unprecedented" 271 relief as the "data LATA" proposal. *Advanced Telecommunications Services*, ¶ 82.

3 Order, *Petition for Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, 12 FCC Rcd. 4738, 4751, 4752 (1997).

LATA," as Ameritech previously requested, would exceed its authority because such action would "effectively eviscerate" §§ 10(d) and 271.[5] The same would be true if the Commission were to permit the elimination of LATAs on a statewide or other basis.

In addition, while the Commission may be able to engage in some limited "redrawing [of] the map lines" under § 3(25)(B), it cannot revise the statutory requirements that *apply* to those lines under § 271. Thus, for example, because § 271's prohibitions apply equally to "data" and "voice" services,[6] the Commission cannot say that a LATA boundary that exists for voice services (whether a LATA boundary established under the MFJ or one subsequently established or modified and approved by the Commission) can be disregarded for data services. Similarly, because the competitive checklist may not be "limit[ed]" by the Commission,[7] and because those requirements and the others imposed by § 271 may not be the subject of forbearance,[8] the Commission may not decide that satisfaction of some lesser portion of those requirements will suffice to enable a BOC to provide service across LATA boundaries.

A distinction between "data" and "voice" services is, moreover, unsustainable. If the BOCs were provided with relief for so-called "data" traffic, then they could, for those customers where it served the BOCs' interests, make every effort to convert what is today circuit-switched voice traffic into IP telephony so as to magnify the scope of relief, and side-step §§ 10, 251, and 271. Data traffic already is rapidly outstripping voice as a source of minutes and revenue for carriers, and even the BOCs concede that the two could soon be indistinguishable. As Bell Atlantic Chairman Raymond Smith has stated, "Currently, 55 percent of our traffic is data. In three to four years, 75 percent of our traffic will be data and 25 percent voice; it will be hard to tell one from the other when you consider voice over the Internet."[9] Under

---

4 *See MCI Telecommunications Corp. v. American Telephone and Telegraph Co.*, 512 U.S. 218, 228, 114 S.Ct 2223, 2230 (1994).

5 *Advanced Telecommunications Services*, ¶¶ 80-82.

6 *See Advanced Telecommunications Services*, ¶¶ 35-37.

7 *See* 47 U.S.C. § 271(d)(4).

8 *See* 47 U.S.C. § 160(d).

9 *Internet Week* (March 2, 1998).

Congress's statutory scheme, this should serve as powerful incentive to comply with Section 271, and help achieve what, to date, has been the elusive goal of opening local markets to competition for all consumers. It should not be used as an excuse to avoid these obligations.

In short, the "data LATA" proposal, particularly when considered in conjunction with the proposed separate affiliate approach,[10] would destroy the carefully crafted framework established by Congress. It would replace the incentive-based approach with a new set of regulations that would reduce incentives for the opening of local markets to competition for the benefit of all consumers. At this critical time for local competition, the Commission should not signal that it will reward delay and intransigence. It should instead take full advantage of the incentives established by Congress to pry open local markets. AT&T therefore respectfully urges the Commission to reject these proposals.

Pursuant to Section 1.1206 (a) of the Commission's rules, I have submitted two copies of this letter to the Secretary of the Commission for inclusion in the public record of the captioned proceeding.

Sincerely,

cc: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani

---

[10] The separate affiliate proposal itself conflicts with the plain language of the Act. Because the proposed advanced services affiliate would be wholly owned by the ILEC, remain under the full control of the ILEC, and enjoy ILEC funding, brand, assets and goodwill, it would be no more than the alter ego of the ILEC, and thereby subject to the ILEC's obligations under the Act. At best, such an affiliate would be a "successor and assign" or "comparable carrier" of the ILEC under § 251(h), and therefore required to comply with the unbundling and other requirements imposed on ILECs by §§ 251 and 252.